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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 18, 2009

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The Honorable Steven Chu  
Secretary  
Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Dear Secretary Chu:

We have in our possession a Department of Energy (DOE) draft Program Decision Memorandum (PDM) that raises troubling questions about your decision-making and current plans concerning the Department's pending license application for authorization to construct and operate a nuclear waste repository at Yucca Mountain, Nevada.

Under current law, Yucca Mountain is the designated site for the nation's first spent nuclear fuel and high-level radioactive waste repository, and that law continues to be the law of the land. The Yucca Mountain license application was submitted by DOE to the Nuclear Regulatory Commission (NRC) in June 2008, after spending billions of dollars in support of more than two decades of scientific, engineering, and risk analyses. During that timeframe, NRC has also expended substantial resources in support of the Yucca Mountain licensing process, including promulgating regulations and technical guidance, hiring personnel, constructing a multi-million dollar hearing facility in Las Vegas, conducting lengthy pre-licensing proceedings and making publicly available millions of documents submitted by DOE and other interested parties on the NRC website.

The DOE application was docketed and accepted for review by NRC in September 2008. Since then, DOE has consistently advised the Congress that the Department plans to participate in the NRC licensing process consistent with its statutory obligations. Just this year, DOE sought and was appropriated funding for FY 2010 to continue with licensing support through September 2010 and otherwise has represented to Congress, as recently as September 30, 2009, that it will "continue participation in the NRC application process" for Yucca Mountain, "consistent with the provisions of the Nuclear Waste Policy Act."

In contrast to these public positions and statements to committees of jurisdiction, your agency's draft Program Decision Memorandum of October 23, 2009, states that "All license defense activities will be terminated in December 2009." Moreover, the memorandum, issued by DOE's Chief Financial Officer (CFO), would cut the relevant budget request for FY2011 in half from existing levels and provide funding only for site remediation, worker transition, and archiving of data associated with the Yucca Mountain Program next year, and then would zero out the budget in following years – all of which indicates agency leadership plans to cease all Yucca Mountain activity and withdraw from the licensing process at NRC. The CFO notes further that information in the draft PDM is not expected to change (see attachment).

This document raises serious questions about your adherence to statutory obligations and responsibilities under the Nuclear Waste Policy Act and about whether you are taking actions that will increase the Department's or taxpayer liabilities and permanently strand billions of dollars in federal funding and investment in the project.

Given the importance of this matter, we seek answers and information relating to your decisions and plans regarding the Yucca Mountain repository and DOE's application before the NRC. In addition, we write to request separate briefings in Committee Minority offices as soon as possible from Steve Isakowitz, Chief Financial Officer, and from Christopher Kouts, Acting Director, Office of Civilian Radioactive Waste Management, concerning agency plans for supporting the Yucca Mountain repository application before the NRC. Please respond to the following questions and requests no later than two weeks from the date of this letter:

1. What are your plans with regard to DOE's pending license application for authorization to construct and operate the Yucca Mountain repository application, including, but not limited to, your plans for support in FY2011 and beyond?
  - a. Provide all documents relating to plans and decisions concerning support for the Yucca Mountain repository application pending before the NRC.
2. What are your plans concerning site remediation, workforce transition, and archiving of data associated with the Yucca Mountain repository program?
3. To the extent you plan to perform site remediation, workforce transition, and archiving of data associated with Yucca Mountain repository program, (i) when did you initiate this decision-making process, (ii) what DOE offices and entities and other federal agencies participated in this decision-making process, and (iii) how will any such action affect DOE's ability to provide the technical support necessary for the license application pending before the NRC?
  - a. Provide all documents relating to plans concerning site remediation, worker transition, and archiving of data associated with the Yucca Mountain repository program.
4. To the extent you plan to modify or suspend the license application currently pending before the NRC, what is the scientific or technical basis, if any, for this planned action?

- a. Provide all documents relating to technical or scientific basis for modifying or suspending the NRC application.
5. How do plans concerning site remediation, worker transition, and archiving of data associated with the Yucca Mountain program comport with DOE's statutory obligations under the Nuclear Waste Policy Act of 1982, as amended?
  - a. Provide all documents prepared by DOE that address or analyze how such actions would comport with DOE's statutory obligations under the Nuclear Waste Policy Act of 1982, as amended
  - b. Provide all documents that address or analyze the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear plants.
6. Provide all documents relating to Congressional requests over the past year for information and documents concerning your policies and plans concerning the Yucca Mountain repository.
7. If DOE withholds any documents or information in response to this letter, please provide a Vaughn Index or log of the withheld items. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.


Should you have any questions, please have your staff contact Mr. Peter Spencer of the Minority Committee Staff of the Energy and Commerce Committee at (202) 225-3641.

Sincerely,



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Joe Barton  
Ranking Member



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Greg Walden  
Ranking Member  
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Henry A. Waxman, Chairman  
Committee on Energy and Commerce

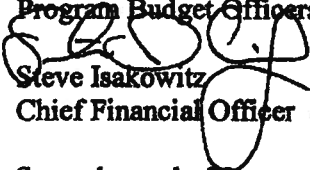
The Honorable Bart Stupak, Chairman  
Subcommittee on Oversight and Investigations



**Department of Energy**  
Washington, DC 20585

October 23, 2009

**MEMORANDUM FOR DISTRIBUTION**

To: **Program Budget Officers**  
From:   
**Steve Isakowitz**  
**Chief Financial Officer**  
Subject: **Second round of Program Decision Memoranda**

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The Department has recently submitted a revised FY 2011 budget request to the Office of Management and Budget. The attached draft Program Decision memoranda (PDMs) codify the decisions made and the information that should be communicated consistently to OMB.

These PDMs are draft, until signed by the Deputy Secretary. Final PDMs will be distributed as soon as possible. We do not expect the information to change.

Attachment



Printed with soy ink on recycled paper

**Office of Civilian Radioactive Waste Management  
FY 2011-FY 2015 Strategic Resources Review  
Program Decision Memorandum**

(Dollars in Thousands)

**Detailed Programmatic Guidance on Funding Decisions**

The FY 2011-FY 2015 Office of Management and Budget (OMB) submission for the Office of Civilian Radioactive Waste Management is summarized below.

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011 - 15
<b>Civilian Radioactive Waste Management</b>						---
Nuclear Waste Disposal						---
Program Direction.....	21,200	---	---	---	---	21,200
<i>Decrement</i>						---
AULG/Earmarks.....	---	---	---	---	---	---
Blue Ribbon Commission.....	---	---	---	---	---	---
Subtotal, Nuclear Waste Disposal.....	21,200	---	---	---	---	21,200
Defense Nuclear Waste Disposal						---
Repository Program.....	25,000	---	---	---	---	25,000
<i>Decrement</i>						---
Subtotal, Defense Nuclear Waste Disposal.....	25,000	---	---	---	---	25,000
Civilian Radioactive Waste Management.....	46,200	---	---	---	---	46,200

**Decrement**

N/A

**Target**

The target funding amount for FY11 is \$46,200, of which \$21,200 shall support site remediation and worker transition and \$25,000 shall support the archiving of data associated with the Yucca Mountain program. All license defense activities will be terminated in December 2009.

**Budget Structure Changes**

The following Budget Structure Changes apply to the Office of Civilian Radioactive Waste Management.

FY 2010 Structure	FY 2011 Approved Structure
Nuclear Waste Disposal	Nuclear Waste Disposal
Yucca Mountain Repository Project	Yucca Mountain Repository Project
Transportation	Transportation
Program Management & Integration	Management of SNF and Radioactive
Program Direction	Waste Alternatives
Congressional Directed Projects	Program Management & Integration
	Program Direction
	Congressional Directed Projects